



POLICE DEPARTMENT

October 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Michael Morrissey
Tax Registry No. 899633
Intelligence Bureau-Criminal Intelligence Section
Disciplinary Case No. 2014-12630

The above-named member of the Department appeared before me on August 4 and August 5, 2015, charged with the following:

1. Said Sergeant Michael Morrissey, on or about September 5, 2013, at approximately 0730 hours, while assigned to the Intelligence Division's Criminal Intelligence Section and on duty in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he participated in an unlawful entry into Nyhiema Brown's residence.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED
CONDUCT

2. Said Sergeant Michael Morrissey, on or about September 5, 2013, at approximately 0730 hours, while assigned to the Intelligence Division's Criminal Intelligence Section and on duty in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he participated in an unlawful search of Nyhiema Brown's residence.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED
CONDUCT

3. Said Sergeant Michael Morrissey, on or about September 5, 2013, at approximately 0730 hours, while assigned to the Intelligence Division's Criminal Intelligence Section and on duty in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he refused to show an arrest warrant to Nyhiema Brown.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED
CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Simone Manigo, Esq., Respondent was represented by Matthew Scheiffer, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

The CCRB's Case

CCRB called Nyhiema Brown as a witness.

The Respondent's Case

Respondent called Detective David Paray as a witness. Respondent testified on his own behalf.

DECISION

Respondent is found Not Guilty of all Specifications.

SUMMARY OF EVIDENCE PRESENTED

It is not in dispute that on September 5, 2013, at about 0730 hours, Respondent and three other police officers sought entry to [REDACTED] in order to effect the arrest of Person A for whom they had an arrest warrant. Intelligence information developed by the NYPD revealed that Person A was the brother of Person B. Detectives from the Brooklyn North Gang Squad had conducted visual

surveillance of Person A and had seen him together with Person B on numerous occasions. Further investigation revealed that Person B used the address [REDACTED], as his residence on at least four occasions, the most recent of which was February 2013. While the record does not suggest that [REDACTED], was Person A's address, the information possessed by Respondent could reasonably lead an individual to believe that Person A might have been found there.

The police officers knocked on the front door to the apartment, which was eventually answered by Ms. Naeema Brown, who lived there with her two-year old son. Ms. Brown's son was not present in the apartment that morning. Ms. Brown initially spoke with the officers through the closed door, then opened the door wide enough to see the officers standing in the hallway and for them to see her. The record is silent as to what relationship, if any, Ms. Brown had to either Person A or B.

After a discussion at the door, the officers entered the apartment and searched several rooms for Person A but did not find him within. As the police officers were leaving the apartment, Ms. Brown requested and received their names and shield numbers.

The issues in this case are: (1) the manner in which Respondent and the police officers under his supervision gained access to Ms. Brown's apartment; (2) whether Respondent obtained consent from Ms. Brown to search her apartment for Person A; and (3) whether Respondent showed Ms. Brown the arrest warrant at her request.

FINDINGS AND ANALYSIS

Resolution of this matter rests on the assessment of witness credibility. In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness' account is logical and comports with common sense and general human experience.

The tribunal credits Respondent's testimony as concise, reasonable, and logical. Respondent credibly testified that he possessed an arrest warrant for Person A and showed it to Ms. Brown inside her apartment, along with a photograph of Person A. Respondent attempted to effect Person A's arrest at [REDACTED] because he learned that: (1) Person A and an individual known as Person B were brothers; (2) police surveillance suggested that Persons A and B were often seen together; and (3) Person B used the address [REDACTED] on at least four occasions known to the police, the latest being February 2013 (T. 109). Respondent testified that when Ms. Brown initially opened her door, he suggested they go inside the apartment so that her neighbors were not privy to "her business" (T. 109-110). Ms. Brown opened the door, telling the police to "come in" (T. 110).

Once inside the apartment, Respondent showed Ms. Brown the arrest warrant and a photograph of Person A and asked her if she knew him (T. 114). She indicated that she did not. Respondent testified that he asked her if it was okay if they looked for him in the apartment, to which she replied, "Go ahead" (Id.). Respondent testified that he made a

notation in his memo book to the effect that Ms. Brown had consented to a search of her apartment for the subject (T. 115). Once the search had concluded, Ms. Brown's demeanor changed and she requested the police to leave and demanded their names and shield numbers (T. 118). Respondent provided his name and shield number to Ms. Brown and departed (T. 119).

There were several key factors which convinced this tribunal that Respondent was telling the truth. Respondent's description of knocking on Ms. Brown's door and suggesting discussing police business out of the earshot of neighbors seems eminently reasonable. Given Respondent's stated purpose in apprehending a wanted individual, showing the arrest warrant to Ms. Brown appears to be a more logical means of securing her cooperation than the heavy-handed tactics she described in her testimony. In questioning by the tribunal, Respondent explained without hesitation that he understood his legal options in seeking entry to a third-party's residence to execute an arrest warrant were limited to consent and exigent circumstances. Finally, Respondent's assertion that he asked Ms. Brown if she knew his subject, then asked her for permission to search the apartment for him, seems logical and consistent with the other evidence in the case.

In contrast, the tribunal finds that Ms. Brown's testimony lacks evidentiary value, in that it contains what appears to be embellishments calculated to exaggerate the purported culpability of Respondent. While Ms. Brown's demeanor at trial appeared to be earnest, the implausibility of material portions of her testimony render her an unreliable witness.

According to Ms. Brown, she was physically seized and her apartment breached by force as she attempted to assert her rights by requesting to inspect the arrest warrant

prior to deciding whether or not to grant Respondent entry. Ms. Brown also testified to being assaulted by Respondent when he snatched a mobile telephone from her hand as she attempted to place a telephone call to the 911 operator. Ms. Brown testified that Respondent's action was executed with such force that he injured her hand.

Ms. Brown testified further that she took a photograph of her purportedly injured hand on the day of the incident and that it began to display signs of "black and blue" bruising. The tribunal rejects this factual assertion. It seems unlikely that Ms. Brown, had she actually sustained such an injury at the hands of Respondent, would have delayed 25 days in reporting to CCRB. While the tribunal is in no position to determine the actual source of this purported injury, Ms. Brown's attempt to attribute it to Respondent is implausible.

Ms. Brown conceded that she made her complaint to CCRB on September 30, 2013, 25 days after Respondents encountered her at her home. The absence of a prompt outcry is not dispositive of her veracity but it certainly weighs against her credibility, particularly when the wrongful acts she alleges are so clearly outside the parameters of appropriate police conduct. Ms. Brown testified that her delay in making a complaint to CCRB was occasioned by the need to research the procedures for making a complaint online. Ms. Brown did not attribute the delay to trauma, fear or any other factor. Based upon her own statements, the tribunal will weigh this factor against her veracity.

In the view of the tribunal, Ms. Brown's testimony regarding: (1) Detective Paray grabbing her hands and pushing her into her apartment; and (2) Respondent snatching a mobile phone from her hands with enough force to cause bruising represents a deliberate

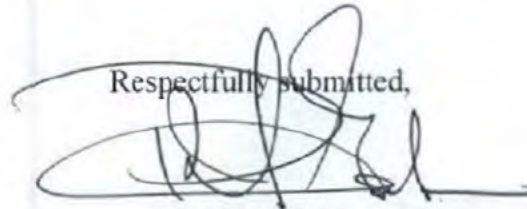
attempt to embellish the facts to sway its findings. Accordingly, the tribunal deems Ms. Brown's testimony lacking in evidentiary value.

Based upon the foregoing, the tribunal credits Respondent's testimony as having the ring of truth. Accordingly, Respondent is found Not Guilty of all specifications.

APPROVED

JAN 07 2016
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner – Trials